

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT LOVELY,

Plaintiff(s)

vs.

HARRY K. RUSSELL,

Defendant(s)

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Case Number: 1:02cv617-SJD-TSH

District Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Timothy S. Hogan filed on December 3, 2004(Doc. 12), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired March 1, 2005, hereby ADOPTS said Report and Recommendations.

IT IS ORDERED THAT Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc.1) is DENIED with prejudice.

A certificate of appealability shall not issue with respect to the dismissal on procedural default grounds of the claims for relief alleged in the petition because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling"as required under the first prong of the two-part standard enunciated in *Slack v. McDaniel*,529 U.S. 473, 484-85 (2000), which is applicable to procedurally-barred claims.

With respect to any application by petitioner to proceed on appeal in forma pauperis, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting this Report and Recommendation would not be taken in "good faith," and therefore DENIES

petitioner leave to appeal in forma pauperis upon a showing of financial necessity. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir.1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge